

FINANCE DOCKET No. 19989

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL. TRACKAGE RIGHTS, ETC., BINGHAMTON
TO GIBSON, N. Y.

Decided July 24, 1958

1. Acquisition of trackage rights (a) by the Delaware, Lackawanna & Western Railroad Company over the line of railroad and certain connecting tracks of the Erie Railroad Company between Binghamton and Gibson, N. Y.; and (b) by the latter over lines of railroad and connecting tracks of the former at or near Binghamton, Vestal, and Nichols, N. Y., and South Waverly, Pa., approved and authorized. Conditions prescribed.
2. Certificate issued (a) authorizing construction jointly by the Delaware, Lackawanna & Western Railroad Company and the Erie Railroad Company of tracks connecting the lines of the applicants at or near Binghamton, Big Flats, and Gibson, N. Y., and (b) permitting abandonment by the former of certain portions of its lines of railroad between Vestal and Nichols, between South Waverly, Pa., and Gibson, and at Binghamton; all in Broome, Tioga, Chemung, and Steuben Counties, N. Y., and Bradford County, Pa. Conditions prescribed.
3. Request for oral argument prior to decision denied.

Rowland L. Davis, Jr., James F. Mulligan, Pierre W. Evans, Thomas D. Caine, and Frederick G. Hoffman for applicants.

Robert Groff for citizens committee in support.

Martin L. Barr for New York State Public Service Commission observing.

Paul M. Donovan, Donald A. Levinger, James E. Personius, J. Richard Benedict, Winston S. Ives, and Donald B. Frederick for affected counties, cities, towns, and civic organizations in opposition.

Joseph P. Scanlon, James E. Gilroy, John S. Gunderman, William E. Nestor, and Leo G. Smith for railway employee organizations in opposition.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND MCPHERSON
BY DIVISION 4:

By application filed November 29, 1957, The Delaware, Lackawanna and Western Railroad Company and the Erie Railroad Company, common carriers by railroad subject to the provisions of part I of the Interstate Commerce Act, herein referred to as the Lackawanna and the Erie, respectively, jointly request appropriate authority, as here-

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inafter described, to permit coordination of their facilities and operations between Binghamton and Gibson, N. Y. Except for a few miles of Lackawanna's branch line to Syracuse, at Binghamton, the principal lines involved are double track portions of the Lackawanna's main line between Hoboken, N. J., and Buffalo, and the Erie's main line between points in New Jersey, across the Hudson River from New York City, and Chicago, Ill. The application is divided into three principal parts requesting authority as follows: Part I. Approval under section 5 (2) of the act for the establishment of perpetual nonexclusive easements for operation (a) by the Lackawanna under trackage rights over the Erie's line from its milepost 213.05 in Binghamton in a westerly direction to milepost 288.81 in Gibson, approximately 75.76 miles, together with turnouts and connecting tracks; the Erie's passenger and freight station facilities at all points except at Binghamton; and approximately 0.441 mile of connecting track in Binghamton near milepost 213.62; and (b) by the Erie under trackage rights over the Lackawanna's line from its milepost 190.58 to milepost 192.95 within Binghamton, approximately 2.37 miles; from milepost 192.83 in Binghamton to milepost 199.89 in Vestal, approximately 7.06 miles; and from milepost 231.02 in South Waverly, Pa., to milepost 220.41 in Nichols, approximately 10.61 miles, together with turnouts and connecting tracks; the Lackawanna's passenger and freight station facilities at Binghamton; and over approximately 0.240 mile of connecting track in Binghamton near milepost 192.02 (Erie milepost 213.62). Part II. Authority under section 1 (18) to (20) for construction jointly of connecting tracks, as follows:

From Erie milepost	To Lackawanna milepost	At or near—	Approximate mileage	From Erie milepost	To Lackawanna milepost	At or near—	Approximate mileage
213.62	192.02	Binghamton.....	0.240	215.29	192.95	Binghamton.....	0.169
213.05	190.72	-----do-----	0.165	283.28	259.13	Big Flats.....	0.198
213.53	191.19	-----do-----	0.142	288.81	264.64	Gibson.....	0.079

The total connecting tracks to be constructed amount to 0.994 mile, of which 0.754 mile will be classified as main track and 0.240 as branch track. Part III. Permission under section 1 (18) to (20) for the Lackawanna to abandon its line from milepost 199.89 in Vestal to milepost 220.41 in Nichols, approximately 20.52 miles; from milepost 231.02 in South Waverly to milepost 264.68 in Gibson, approximately 33.66 miles; and from milepost 192.26 (Syracuse branch line) southerly to main-line milepost 191.33 in Binghamton, 0.030

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mile; ¹ or total trackage to be abandoned, 54.21 miles; ² all in Broome, Tioga, Chemung, and Steuben Counties, N. Y., and Bradford County, Pa. Unless otherwise specifically shown, all points mentioned herein are in New York.

Numerous protests were filed and a hearing was held at Elmira on February 25-28, 1958. Appearances in opposition were entered on behalf of Tioga and Chemung Counties, the city of Elmira, several business interests therein and its association of commerce, the village of Elmira Heights, the town of Nichols, and by organizations representing the applicants' employees. Counsel for the New York State Public Service Commission appeared as an observer. The applicants requested that intermediate procedures subsequent to the hearing be eliminated to the extent possible in order to hasten consummation of the proposed transactions and to permit early realization of the contemplated savings that would accrue to both carriers. At the hearing the examiner ruled, predicated on the authority of section 8 (a) (2) of the Administrative Procedure Act, that due and timely execution of the Commission's functions would imperatively and unavoidably require the omission of an examiner's report. In view of the generally unfavorable financial conditions of the applicants, one of them in particular, the necessity for them to proceed with dispatch to effect operating economies consistent with the public interest, and the opportunity offered herein to effect economies vital to their continued survival without reducing service to the public, we conclude that the omission of an intermediate proposed report is warranted and sustain the examiner's ruling with respect thereto. Briefs and reply briefs were filed. At the hearing the protestants requested that an opportunity to argue orally before us be accorded prior to the issuance of a decision. By petition filed April 4, 1958, the applicants requested that an initial decision of this division be omitted and that a report of the entire Commission be issued in the first instance. In that petition the applicants assert they prefer that oral argument be waived, but, if granted, that it be before the entire Commission. In view of briefs and reply briefs having been filed, oral argument prior to our report and decision would serve no useful purpose and, accordingly, is denied. We denied the petition to omit the division's report by order dated May 15, 1958.

¹ The Lackawanna's yard trackage between milepost 246.95 in Elmira, and 252.15 in Horseheads; and between milepost 258.17 and 259.13 in Big Flats will continue to be used for switching purposes.

² The Lackawanna's line from approximately 192.95 near Binghamton to milepost 199.89 at Vestal, and from milepost 220.41 at Nichols to milepost 231.02 at Waverly, will be changed to single-track line.

The lines in question are maintained to standards of first-class main lines and are in excellent condition. They virtually are parallel to each other, are immediately adjacent in several points for varying distances, generally are less than 1 mile apart, and do not diverge more than 1.5 miles at their greatest separation. As the lines extend westwardly from Binghamton, the points served by the applicants (names of points served by only one applicant followed by name of such applicant in parentheses) and their approximate or average railroad distance from Binghamton, are as follows: Johnson City 1, Vestal (Lackawanna) 7.2, Endicott (Erie) 8.5, Apalachin (Lackawanna) 12.3, Owego 20, Nichols 27.3, Smithboro (Erie) 30, Waverly 40.5, Chemung (Erie) 45, Parshalls Cove 46, Lowman (Lackawanna) 48, Wellsburg (Erie) 48.5, Elmira 58, Horseheads 61, Big Flats 67, and Gibson which is 71.69 miles from Binghamton over Lackawanna's line and 73.52 miles over Erie's line. Corning, which both applicants serve, is about 2.7 miles west of Gibson. According to the 1950 Federal census, the populations of the largest points that would be affected by the coordination are as follows: City of Elmira 49,716, villages of Elmira Heights and Horseheads (environs of Elmira) 5,009 and 11,118, respectively, township and village of Owego including Apalachin 15,291, and the village of Waverly 6,037. Between Binghamton and Parshalls Cove, the Erie's line is north of the Susquehanna and Chemung Rivers, while Lackawanna's line is south of the rivers to a point near Waverly where it crosses the river and continues in Pennsylvania through the Borough of South Waverly, thence south of the Chemung River across the State line into New York near Parshalls Cove, thence north of the Erie's line to Elmira. West of Elmira the lines are adjacent and parallel as they extend to Gibson where the proposed coordination terminates.

Under various agreements with other carriers, portions of the Erie's line presently are used jointly also by the Delaware & Hudson River Railroad Company between Binghamton and Owego; by the Lehigh Valley Railroad Company between Waverly and Elmira; by The Pennsylvania Railroad Company between Southport Junction (south of Elmira) and Chemung Junction (north of Elmira); and by the Lehigh Valley Railroad Company and The New York Central Railroad Company within Elmira, as subtenants of the Pennsylvania Railroad. The proposed coordination would not affect the operations of the tenant railroads, and their trains and traffic would continue to be considered as the trains and traffic of the Erie.

The separate proposals for the granting of trackage rights by the Erie over approximately 76.20 miles of its line, and by the Lackawanna over approximately 20.28 miles of line, and appurtenant trackage and other facilities, and the details of the location of the

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6 segments of connecting tracks to be constructed jointly by the applicants are outlined in the opening paragraph of this report and need no further description. The proposed abandonment of approximately 54.21 miles of the Lackawanna's line, also described in detail in the opening paragraph herein, would be effectuated after the proposed construction is completed and the joint-use operations are commenced. The approvals sought herein would permit the coordinated operations contemplated by the applicants. Under the plan, the applicants each would conduct main-line operations over the Erie's double-track line; and both would provide branch-line service over the Lackawanna's line between Binghamton and Vestal (7.06 miles) and between Nichols and Waverly (10.61 miles), both portions of which would be changed from double track to single track. The portions of the Lackawanna's line between Vestal and Nichols and between Waverly and Gibson, and about 0.30 mile of trackage in the area of the Binghamton station, would be abandoned and removed. No trackage of the Erie is to be removed as part of the coordination plan.

As foreseen under the coordination plan, the line of the Erie each day would be used for the handling of the 31 presently scheduled passenger and freight trains of the Erie and the 24 such trains of the Lackawanna. Operationally, the applicants' responsible personnel estimate that the daily traffic over the line in the future would involve total delays of less than 1 hour in every 24-hour period. During World War II, the Erie's trackage adequately handled approximately the same number of trains as the applicants contemplate would be handled under the proposed combined operations. As planned, the 24-hour capacity of the coordinated line would be adequate to handle more trains than the total now operated over the applicants' separate lines, and, if required, the present capacity could be enlarged by providing additional trackage on the existing rights-of-way. By providing reversible signaling as planned in the proposal herein, the capacity of the Elmira yards could be more than doubled. A witness for the Erie expressed the opinion that, if the present plans to coordinate had been in effect during the war years, the trackage would have been able to handle twice as many Erie trains as actually moved thereover and could have handled the combined volume of war traffic which moved over the lines of the Erie and the Lackawanna. This conclusion is based partly upon the capacity of the present signal system to permit trains to operate closer together than in the 1944 period, even though the present trains are 20 or more cars longer than in 1944.

The proposed coordination and joint use is detailed in an agreement between the applicants dated November 27, 1957. Its principal

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provisions would permit the applicants and their respective successors and assigns forever to operate over the others' trackage-right sections including the described right-of-way, tracks, connections, structures, and related improvements and appurtenances, whether existing or to be constructed pursuant to the agreement or in the future, all subject to outstanding leases, licenses, limitations, and any adverse or other interests; the Lackawanna would bear the cost of retiring the portions of line to be abandoned and would retain the proceeds from the sale of salvage materials and real property pertaining thereto; the locomotives, equipment, cars, and trains of each applicant would have equal rights and privileges and be subject to the same conditions and restrictions as the other; the owning company would control all operations over its trackage sections and would supervise and perform all the customary agency and incidental duties at the jointly used freight and passenger stations (except at the Binghamton and Elmira passenger stations); the Erie would perform all the switching and other handling and servicing of cars and locomotives of the Lackawanna at Elmira and on the trackage section there, at South Waverly (Pa.), Waverly, and over the Nichols trackage sections; existing sidetracks serving industries on the line or at the stations of either carrier would continue to be served exclusively by the owning carrier; future newly located or newly expanded present industries would be served by both carriers, contingent upon the cost of constructing new sidetracks or extensions being shared equally by the applicants; and the owning company would maintain all its operating properties (except that Erie would maintain signal, interlocking, and crossing-protection facilities on the Lackawanna's trackage section within Binghamton and on the Erie's Binghamton-Gibson trackage section).

The expenses involved in accomplishing the coordination and the future operation of the various trackage sections would be shared by the applicants (1) equally in regard to capital expenditures, job-protection requirements, and certain car inspections, (2) in the ratio of gross ton-miles in regard to train operation, maintenance of operating and communication facilities, dispatching services, and real-estate taxes and assessments, (3) in the ratio of loaded cars handled in regard to the foregoing expenses on the Lackawanna's Vestal-Nichol trackage sections, (4) in the ratio of cars dispatched in regard to switching at Elmira and Waverly, (5) in the ratio of locomotive units serviced at Elmira and Waverly, (6) in the ratio of the number of pieces of United States mail and other "head-end" traffic handled for the applicants at each point, (7) on the basis of specific percentages chargeable to the applicants in regard to each particular passenger and/or freight station involved, (8) on the basis of specified flat rates

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in regard to certain inspection, repairs, and switching of passenger equipment and switching freight cars at Binghamton, (9) on the basis of various use factors in regard to maintenance of pole and communication facilities, and (10) on the basis of actual costs for material used for car and locomotive repairs. The various factors mentioned, to the extent applicable, are defined as conforming with our accounting and other regulations.

Other provisions of the agreement pertain to the mechanics of the applicants' billing each other and inspecting their respective books, records, and accounts; future abandonments; liability and indemnity in regard to losses of or damage to property and injury or death to persons; the filing of applications for appropriate authorizations to effectuate consummation of the proposals in question; the applying to interest mortgage trustees for releases to permit nonexclusive easements free of corporate mortgage liens; future modifications of the agreement; and arbitration of disputes related to interpretations of the provisions of the agreement.

Estimates submitted by the applicants show that the cost of constructing the necessary turnouts and connecting tracks involved in the coordination and joint use would be about \$1,632,366, of which each applicant would pay \$816,183. The projects involve expenditures of \$945,824 on the Erie's properties and \$686,542 on the Lackawanna's properties, of which the former consists of \$878,028 for capital additions and betterments, and \$67,796 for operating costs, and the latter consists of \$631,850 and \$54,692 for the same items, respectively. Available cash funds would be used by both applicants, and neither would require any new financing or securities. The applicants would not assume the other's obligations or liabilities with respect to any encumbrances on the properties covered by the application. Construction of the various projects would commence immediately upon the application being approved by us, and would require about 6 months to complete. The salvage value of the tracks and other materials in the Lackawanna's line to be abandoned, after deducting the cost of their recovery, would amount to approximately \$2,291,500. The salvaged materials would be available for reuse by the Lackawanna, and any funds received from the sale of the salvage would be retained entirely by the Lackawanna.

The results of detailed studies of the prospective costs as estimated by the engineering and operating departments of the applicants show that the proposed coordination would effect annual saving of \$481,327 to the Erie and \$624,765 to the Lackawanna. The tabulation contained in the appendix hereto shows in separately numbered columns (1) the present combined costs of the expenses listed, (2) the combined costs to be incurred after the coordination is effectuated, (3)

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changes in the Erie's costs, and (4) changes in the Lackawanna's costs. As indicated, the items in some instances reflect added costs to one applicant or the other, and together show the net savings that presumably would be effectuated. Each individual item is computed upon specific bases, or upon formulas in accordance with appropriate unit ratios, mileage proportions, or other separations of actual costs, or upon division or system averages or other estimates which were set forth in several underlying exhibits and fully explained by oral testimony. The allocations to the respective applicants are determined upon specific bases described in the coordination and joint-use agreement as outlined hereinabove.

The asserted savings on real-estate taxes (listed in the appendix) were approximated on the basis of 1957 taxes, and upon the assumption that future valuations of the applicants' properties would decrease in relation to the mileage abandoned as part of the coordination plan. Part of the savings are based on the anticipation that the applicants will dispose of the right-of-way land after the tracks are removed. Other elements of tax assessment in the 19 affected taxing districts were not specifically considered in arriving at the estimates. The applicants made no effort to ascertain from the taxing authorities what would be the effect of the proposed changes in operation, and no complaints were filed with the local authorities for any type of relief from the recorded tax assessments. To the extent that they raised the foregoing questions, the protestants attempted to develop that the tax-savings estimates of record were not well founded. No counter estimates were presented. The protestants request that the claimed tax savings be stricken from the record for failure of proof that savings would accrue to the extent shown. However, they do not contend that there would be no savings in taxes if the coordination is effectuated. Acceptance of the computed tax savings is proper, even though in its realization somewhat smaller tax advantages would accrue as an incident to the proposed abandonment and changes in operation which are under consideration.

On similar general assertions of inadequacy, the protestants attack as improper many of the items of predicted cost which are based upon system or division unit costs or upon other allocations. The applicants concede that the assailed summaries are approximations, but submit that they are reasonably accurate and reliable. Because of the lack of more precise systems of determining future expenses regarding operation of segments of lines of railroad, we have found various formulas, generally the same as those presented herein, to be acceptable in abandonment, construction, and other related proceedings. Of course, any of the constructed items might vary to some extent from the amounts that future experience would show the actual

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costs to be. However, we think we may accept as a fair approximation the applicant's estimates of the annually recurring savings.

General information about the financial condition of the applicants at the date of the hearing was presented to demonstrate that consummation of the coordination project would be of vital importance to the financial stability of both applicants. The position of the Lackawanna has worsened consistently in recent years. Its year end working capital (excess of current assets, exclusive of materials and supplies, over current liabilities) between 1952 and 1954 ranged from (millions of dollars) 13.9 to 16.4, but dropped to 2.9 in 1955, 0.33 deficit in 1956, and 0.62 deficit in 1957, and its available cash including United States Government securities dropped from 19.4 at the end of 1952 to 9.8 at the end of 1955, 7.0 in 1956, and 4.1 in 1957. Its average annual net income for the period 1952-54 was 5.7 million dollars, and for 1955-57 was 1.5. Typical of its present position is that, while the Lackawanna's gross revenue during 1957 was 86 million dollars, its net income after fixed charges was only about 0.43, and its railroad operating income produced a deficit of about 1.7, which was more than offset by its nonoperating net income from such sources as dividends, rents, interest, and a small income-tax refund. During December 1957 and January and February 1958, carloadings on the Lackawanna had decreased by from 17 to 25 percent from carloadings during the same months of the preceding year. Data regarding the Erie show that its fiscal position is less critical than that of the Lackawanna, although its working capital excluding material and supplies reflected a small deficit at the end of December 1957. The Erie's income statements for the last 5 calendar years show that its net incomes after fixed charges (millions of dollars) were as follows: 15.36 in 1952, 14.67 in 1953, 8.38 in 1954, 11.22 in 1955, 11.5 in 1956, and 6.94 in 1957.

Generally, the only decrease in the Lackawanna's service that would result from the coordination of operations would be the discontinuance of freight service to lumber dealers at Apalachin, whose railroad business totaled 12 cars in 1957, and the termination of passenger service at Nichols, the revenues from which in 1956 and 1957 produced \$900 and \$1,057, respectively. Except for necessary changes in timetable schedules, neither the freight nor the passenger service of Erie would be decreased. No user of freight or passenger service of either applicant has opposed approval of the coordination plan. Several counties and communities which are along the lines herein actively object to the proposed changes in operations. They express concern over the plan having the effect of concentrating too much through traffic on the existing Erie main line in disregard of the resulting injury to the prospects of continued business and industrial development of the adjacent areas; the public need for continuation of service over

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both lines; the physical capacity of the Erie's line to handle the contemplated increased flow of traffic thereover; and the additional risk to city and other highway traffic which would be required to cross the Erie's line after institution of the more frequent service.

The city of Elmira is divided roughly into equal quarters by the Erie's line which extends approximately north and south (east-west railroad direction) through the city's center, and by the Chemung River which runs east and west, somewhat south of the center of the city. After crossing the river in Elmira, the Erie's line is situated on a 35 foot wide elevated, concrete structure about 6 blocks in length through the city's principal retail business district. The Lackawanna line extends through an area near the edge of the northeasterly quarter, the character of which is partly industrial and partly semi-residential, with lumberyards, coaldealers, and similar commercial enterprises therein. The businessmen of Elmira who testified in opposition to the proposal herein expressed the belief that abandonment of the Erie's facilities in the heart of the retail center of the city would be beneficial to the economic posture of the city and the area which it serves as the chief trading center. They contend that similar advantages would not result from the proposed abandonment of the Lackawanna's line.

The individual supporters of the aforementioned position and the Association of Commerce of Elmira desire to avoid what they predict would be the adverse effect upon their city of permitting the Erie to continue to operate through the center of the business area. In that connection, they contend that the increased use of the Erie's trackage would deter any improved development of the city's downtown area and would depress commercial values of the properties in the vicinity of the line. The record shows that the business area has expanded somewhat in years past despite the existence of the Erie's overhead structure and line in the center of the downtown street, and that within a few blocks of the line certain concerns recently erected new stores and improved their existing places. Except that they desire that Elmira be accorded different treatment under the coordination plan, the Elmira protestants express agreement with the general purpose of the proposals of the applicants and assert that they recognize there is an existing need to protect the future ability of the railroads to continue to provide adequate transportation service at, to, and from the city of Elmira. Appraising the position of the Elmira business community, we find that the facts upon which the objections are based serve to show only that the local interests of Elmira do not in all respects coincide with the broader interests of the general public in continued service by two railroad carriers under a coordinated plan

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permitting more efficient operations. Under such circumstances, the latter considerations are of paramount importance, and they must prevail.

A second contention on behalf of protestants concerns about 1,500 feet of the Erie's line situated west of Waverly at the base of what is termed "Waverly Hill." That portion of the line is constructed upon a ledge at the base of a cliff above the elevation of the riverbank, at which level there is an all-weather county highway. The embankments above the railroad and between it and the highway are supported by retaining walls, consisting of various types of cribbing which are maintained by the Erie. At various times in the past, the protective cribbing required replacement or repairs because of bulging and other evidence of undue stress. Witnesses on behalf of Chemung County and the area near Waverly expressed concern about the capacity of the cribbed portion of the line physically to handle double the present volume of traffic. They expressed opinions that the coordination would be better served if the combined operations were conducted over the Lackawanna's line which is not immediately next to the riverbank. The county highway engineer pointed out that excessive vibration of heavy railroad trains probably presents hazards to the line at this point, but conceded that other factors also contribute to the occasional damage to the highway and embankments. The Erie's engineering and operating department witnesses disputed the charges of extra hazardous conditions at the point in question, and showed that during the war years, and other periods of peak usage, the cribbed portion adequately supported the roadbed and the traffic thereover. The testimony of the engineers who are charged with carrying out the Erie's responsibility to maintain and operate the line at high standards of safety and efficiency, in our opinion, is entitled to greater weight than the opinion of persons not conversant with the line's characteristics and inherent potentialities.

Public witnesses from the town of Elmira Heights also objected to the combined operations over the Erie's line instead of over the Lackawanna's line. Both lines are near the center of the town and each crosses a main street at grade. These crossings are provided with watchman protection, and others in the town have flasher protection only. The superintendent of schools of the town asserted that school buses must cross the tracks of both applicants at grade and can avoid this only by driving extra distances to reach overhead or underpass crossings in Elmira or Horseheads. Specially arranged counts of bus-riding students and the location of their homes in relation to the town's schools indicate that more children would require transportation across the Erie's line than across the Lackawanna's

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line if only one continues to operate. Reference by counsel was made to legal proceedings before the State Public Service Commission to require the Erie and the Lackawanna to separate the grade at which the streets of Elmira Heights are crossed. Evidence relating to the proposals in reference to the State commission proceedings was excluded by the examiner, as was evidence relating to the comparative costs to the Erie and the Lackawanna if they should be ordered to provide grade separations. Counsel excepted to the evidence being excluded. Evidence regarding any possible future construction costs, due to final termination of pending administrative or legal actions in any forum, cannot be determinative in the proceeding before us. The examiner's rulings in this connection are sustained. Our conclusions as to the local interest of the city of Elmira compared with the broader public interest in adequate and efficient transportation service are equally applicable in regard to the position of the town of Elmira Heights. However, we think that both these cities will derive appreciable benefits from the proposal.

Maps and other exhibits of record indicate that within the distance of the coordination project the Erie's line operates in generally more populated areas than does the Lackawanna's line. On that premise the protestants contend that the proposed coordination necessarily would expose the applicants and the general public to the hazards accompanying railroad operations which would be greater than would be encountered if the traffic of both applicants were to move over the Lackawanna's line. This aspect is particularly emphasized in connection with the overhead trackage within Elmira and the bottleneck which would ensue if any accidental condition prevents trains from operating into or out of Elmira. In direct reply to a query on this point, the Lackawanna's president asserted that any temporary bottleneck would be relieved by use of numerous alternative routes that could be invoked during emergency periods, and that all the lines of every railroad in the area would be available to achieve necessary detour routing. Such solutions to possible disruptions of service normally are anticipated in railroad operations. We find no merit in the contention that the situation herein would be especially onerous if the coordination is carried out as proposed.

Expressive of their desire to cooperate with the applicants' overall objectives, the protestants argue that the coordination plan could be effected by modifying it to protect the interests of business and property values within Elmira, provide public crossing safety within Elmira Heights, and avoid the continued use of the Erie's line near Waverly Hill. Thus, they propose that the coordination could be granted only insofar as the Erie's line would be used for all traffic between Binghamton and a point east of Waverly. During the hear-

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ing, protestants' counsel sought to introduce a plan for coordination patterned on the foregoing suggestion. Upon objection of the applicants, evidence of the suggested plan was excluded as being beyond the scope of the application under consideration. In that regard, the applicants are entitled to request what they desire us to consider, and to have the application approved or denied upon such basis. Testimony of the background pertaining to the filing of the application as presented reveals that during several years of study many different plans of coordination were considered, and that several of the tentative plans had been publicized within the affected area. Among the plans rejected were several which would involve operating over more of the Lackawanna's trackage and less of the Erie's. Compared to the plan which the applicants finally adopted, partially completed preliminary estimates showed that a variation of the coordination plan, said to be similar to that suggested by the protestants, would involve combined expenditures by both applicants of about \$800,000 more in initial costs and about \$300,000 more annually in average operating costs, and would produce about \$400,000 less from recoverable salvage. The record satisfactorily demonstrates that the plan under consideration is reasonable from the point of view of practicable and efficient joint operations.

In addition to the foregoing broad objections, the city of Elmira posed as a legal issue the question of whether the Erie's contractual rights under agreements with the trustees of the village of Elmira, dated in 1840 and 1850, permit the admission of tenant carriers to share in the use of the public streets in which the Erie's trackage is located. In reply, the applicants submit that technically the Lackawanna would become an assignee of an easement involving the Erie's rights, which is specifically permitted in the agreement. Of course, in the present proceeding we are not required to determine the extent of the Erie's contractual rights regarding the portion of its line in question.

The application herein contains a statement that the proposed transactions would result in the displacement and dismissal of employees to an extent not then determinable. As stated previously, representatives of several employee organizations appeared at the hearing in opposition. However, during the opening stages of the hearing a stipulation dated February 25, 1958, entered into by officers of both applicants and by the Railway Labor Executives' Association, agreed that, in the event the application is approved, the parties will accept the imposition of the same conditions for the protection of the employees affected as those prescribed by us in *New Orleans Union Passenger Terminal Case*, 282 I. C. C. 271. Thereafter, no representations were made on behalf of employee organizations. In view of the stipulation and
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agreement, our decision herein will be subject to the same conditions as were imposed in the *New Orleans* case, *supra*.

As discussed hereinabove, the record is clear that the proposals of the Erie and the Lackawanna would eliminate an extensive portion of duplicative facilities, and thus would increase the efficiency of the operations of both applicants. The coordination, when effectuated, would result in the realization of annual savings in the total amount of more than \$1,000,000, and in an initial saving to the Lackawanna equivalent in value to \$2,291,500. The coordination can be implemented and placed in operation with practically no effect on the applicants' service to the general public. In times of economic difficulty, such as has overtaken the railroad industry in the past year or more, and in light of the present financial condition of the Lackawanna and the worsening fiscal position of the Erie, proposals such as are presented herein are evidence that railroad management is attempting to find means of reducing operating costs to achieve economic survival. Where there is no overbearing adverse effect upon the public, such efforts must be encouraged. Considering the substantial savings that the applicants together would enjoy, the predicted hardships about which the cities and other political areas have expressed apprehension are not of serious consequence. The fact is that none of the existing conditions objected to would be alleviated if the proposal herein were to be denied, and, to some extent, portions of the purposes which the protestants profess to desire would be furthered by approval of the application. The proposals which concern acquisition of trackage rights, in our opinion, are in the public interest, and the incidental construction and abandonment phases of the coordination, no doubt, will benefit public convenience and necessity. Under the circumstances, to require continued operation of the portions of the Lackawanna's line proposed to be abandoned would impose an undue and unnecessary burden upon the applicants and upon interstate commerce.

The acquisition of the trackage rights by each applicant will not result in any increase of total fixed charges or the guaranty or assumption of the payment of dividends or fixed charges. No other railroad has requested to be included in the trackage-rights aspects of these proposals.

Subject to the conditions regarding protection of employees previously referred to, we find that acquisition of trackage rights (a) by The Delaware, Lackawanna and Western Railroad Company over the line of railroad and certain connecting tracks and appurtenant facilities of the Erie Railroad Company between Binghamton and Gibson, N. Y., and (b) by the latter over lines of railroad and connecting tracks and appurtenant facilities of the former at or near Bing-

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hamton, Vestal, and Nichols, N. Y., and South Waverly, Pa., described herein, are transactions within the scope of section 5 (2) of the act, that the terms and conditions proposed are just and reasonable, and that the transactions will be consistent with the public interest.

We further find that the present and future public convenience and necessity (a) require construction jointly by The Delaware, Lackawanna and Western Railroad Company and the Erie Railroad Company of tracks connecting the lines of the applicants at or near Binghamton, Big Flats, and Gibson, N. Y., and (b) permit abandonment by the former of certain portions of its lines of railroad between Vestal and Nichols, between South Waverly, Pa., and Gibson, and at Binghamton; all in Broome, Tioga, Chemung, and Steuben Counties, N. Y., and Bradford County, Pa., described herein.

An appropriate certificate and order will be issued effective 35 days from the service thereof, which will provide that the proposed construction shall commence on or before December 1, 1958, and shall be completed on or before September 1, 1959. The certificate also will contain provisions with respect to the filing of tariffs and the submission of journal entries.

COMMISSIONER MCPHERSON being absent, did not participate in the disposition of this proceeding.

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APPENDIX

Expense Items	Present combined cost (1)	Estimated combined cost (2)	Effect on the Erie ¹ (3)	Effect on the Lackawanna ¹ (4)
Maintenance—main line:				
Track, fastenings.....	\$1,277,359	\$970,898	\$206,067	\$100,394
Signals, et cetera.....	264,312	207,206	22,427	34,679
Bridges.....	147,822	77,220	25,451	45,151
Buildings.....	36,858	31,064	4,344	1,450
Maintenance—Vestal-Nichols:				
Track, fastenings.....	169,701	32,592	0	137,109
Bridges.....	60,516	7,478	0	53,038
Joint maintenance:				
Switching locomotives.....	71,687	47,860	6,260	17,567
Code control machine.....	616	616	306	306
Wire lines.....	675	675	335	335
Communication lines.....	1,764	1,764	882	882
Pole lines.....	5,625	5,625	2,790	2,790
Operations:				
Crossing protection.....	48,661	37,764	18,731	7,834
Police protection.....	10,000	10,000	4,960	4,960
Dispatching.....	28,421	28,421	14,097	14,097
Real-estate taxes:				
Main line.....	506,612	306,495	118,187	21,931
Vestal-Nichols.....	62,290	28,187	0	34,103
Switching cars:				
Waverly.....	84,310	33,154	16,577	34,579
Elmira.....	544,639	409,487	31,376	166,528
Car inspection, et cetera:				
Elmira.....	233,957	203,715	31,196	61,438
Off-line points.....	12,712	12,712	6,356	6,356
Locomotive inspection:				
Elmira and Waverly.....	112,475	75,713	13,193	49,955
Head-end traffic:				
Binghamton.....	202,187	183,267	9,400	28,320
Elmira.....	137,523	113,419	49,936	25,838
Station operations:				
Binghamton.....	141,802	101,904	35,773	4,125
Johnson City.....	36,108	28,836	3,590	3,682
Endicott-Vestal.....	67,216	59,295	5,758	2,163
Owego.....	32,369	22,222	4,564	5,583
Waverly.....	67,871	58,542	5,116	4,213
Elmira.....	74,901	63,499	26,935	15,533
Big Flats.....	6,907	5,506	300	1,101
Other affected items:				
Switching at Binghamton.....				82,125
Crews increased payments.....				16,000
Private car-line miles.....				12,000
Overtime at Endicott.....			13,250	
Lampighter, Elmira yard.....				8,286
Miscellaneous.....				1,590
Total reduced expenses.....			481,327	624,765

¹ Italicized items reflect increased costs.

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